AMENDED

April 3, 2019

**H. 3780**

Introduced by Reps. White, Hixon, Taylor, Cobb‑Hunter, Funderburk, Anderson, Hewitt, R. Williams, Davis, Brown, Weeks, Rivers, S. Williams and Gilliard

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Read the first time January 29, 2019.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 7, TITLE 59 SO AS TO CREATE THE “GROWING RURAL ECONOMIES WITH ACCESS TO TECHNOLOGY (GREAT) PROGRAM”, TO FACILITATE THE DEPLOYMENT OF BROADBAND TO UNSERVED AREAS OF THE STATE, TO PROVIDE DEFINITIONS, TO ESTABLISH THE GROWING RURAL ECONOMIES WITH ACCESS TO TECHNOLOGY FUND, TO PROVIDE THAT ANY PROPERTY OWNED BY A MUNICIPALITY MAY BE LEASED OR RENTED IN CERTAIN SITUATIONS, TO PROVIDE THAT A MUNICIPALITY‑OWNED UTILITY MAY BE LEASED, TO PROVIDE THAT A MUNICIPALITY IS AUTHORIZED TO SELL OR LEASE ANY PUBLIC ENTERPRISE THAT IT OWNS, TO PROVIDE THAT THE STATE SHALL ALLOW COLLOCATION, INSTALLATION, AND OPERATION OF CERTAIN EQUIPMENT BY A BROADBAND PROVIDER ON ANY EXISTING STRUCTURES, AND TO PROVIDE FOR A MONTHLY 911 SERVICE CHARGE; AND TO DESIGNATE THE EXISTING PROVISIONS OF CHAPTER 7, TITLE 59 AS “ARTICLE 1, GENERAL PROVISIONS”.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 7, Title 59 of the 1976 Code is amended by adding:

“Article 3

Growing Rural Economies with Access to Technology (GREAT) Program

Section 59‑7‑300. There is established the Growing Rural Economies with Access to Technology (GREAT) program to facilitate the deployment of broadband to unserved areas of the State. The purpose of this program is to encourage the deployment of broadband at the highest possible speeds throughout as much of the inhabitable geographic area of the State that is practical and feasible by the year 2030.

Section 59‑7‑310. As used in this article:

(1) ‘Agriculture’ means:

(a) the cultivation of soil for production and harvesting of crops including, but not limited to, fruits, vegetables, sod, flowers, and ornamental plants;

(b) the planting and production of trees and timber;

(c) dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing;

(d) aquaculture as defined in Section 46‑1‑10(2);

(e) the operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation;

(f) when performed on the farm, ‘agriculture’, ‘agricultural’, and ‘farming’ also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on a farm, and similar activities incident to the operation of a farm; or

(g) a public or private grain warehouse or warehouse operation where grain is held ten days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain.

(2) ‘Authority’ means the South Carolina Rural Infrastructure Authority.

(3) ‘Broadband service’ means terrestrially‑deployed Internet access service with transmission speeds of at least twenty‑five megabits per second (Mbps) download and at least three megabit per second upload.

(4) ‘Cooperative’ means a telephone membership corporation, organized pursuant to Article 1, Chapter 46, Title 33.

(5) ‘Director’ means the Executive Director of the South Carolina Rural Infrastructure Authority.

(6) ‘Eligible economically‑distressed county’ means a county designated as a Tier IV or Tier III county as defined in Section 12‑6‑3360.

(7) ‘Eligible project’ means a discrete and specific project located in an unserved area of an economically‑distressed county seeking to provide broadband service to homes, businesses, and community anchor points not currently served. Eligible projects do not include middle mile, backhaul, and other similar projects not directed at broadband service to end users. The designated area for an eligible project may not be smaller than a census block.

(8) ‘Eligible recipient’ means private providers of broadband services, including cooperatively organized entities, or any partnerships formed between cooperatively organized entities, private providers, or any combination thereof. To be considered an ‘eligible recipient’ there must be either a demonstrated success in having previously managed retail end‑user networks with proof of acceptable customer satisfaction, or the ‘eligible recipient’ must hold a contract with such an entity to actually provide service over the facilities being funded.

(9) ‘Household’ means a house, apartment, single room, or other group of rooms, if occupied or intended for occupancy as separate living quarters, and where the occupants do not live with any other persons in the structure, and there is direct access from the outside or through a common hall.

(10) ‘Infrastructure costs’ means costs directly related to the construction of broadband infrastructure for the extension of broadband service for an eligible project, including installation, acquiring or updating easements, equipment, fiber, construction, backhaul infrastructure, and testing costs. The term does not include overhead or administrative costs.

(11) ‘Unserved area’ means a designated geographic area where at least ninety percent of households are presently without access to fixed, terrestrially‑deployed broadband at speeds of at least ten Mbps download and at least one Mbps upload. Areas where a private provider has been designated or has applied to receive funds through other state or federally‑funded programs designed for broadband deployment must be considered served if the funding is intended to result in construction of facilities in the area within twenty‑four months.

Section 59‑7‑320. (A) The Growing Rural Economies with Access to Technology Fund (fund) is established as a special revenue fund in the South Carolina Rural Infrastructure Authority, with amounts to be appropriated by the General Assembly. The director may award grants from the fund to eligible recipients for eligible projects. The funds must be used by the recipient to pay for infrastructure costs associated with an eligible project. To ensure consumers served by the infrastructure funded by this program are actually receiving the service intended and that the network is properly maintained, the recipients are subject to applicable rules and regulations governing other similar providers or others receiving state support to provide communication services and are subject to the authority of the Office of Regulatory Staff (ORS) regarding inspections, audits, or examinations, as set forth in Section 58‑4‑50. The Authority and ORS are authorized to share relevant information with each for the purposes of carrying out their respective tasks.

(B) Project areas comprised of census blocks, or portions thereof, within which a broadband provider is receiving state or federal matching funds to deploy technologically neutral scalable broadband facilities within the next twenty‑four months are ineligible for the GREAT program. It is essential for the Authority to know the location of census blocks, or portions thereof, comprising these areas so it can determine project eligibility. A private provider receiving state or federal matching funds to deploy broadband facilities within the area shall, before January 1, 2020, submit only a listing of the census blocks, or portions thereof, comprising each of its federally‑funded project areas meeting this requirement and nothing more to the Authority. In future program years, the cutoff date for submitting this census block data is May fifteenth. The Authority only shall utilize this data to update maps of census blocks to reflect these census blocks, or portions thereof, as being served. Information provided to the office pursuant to this subsection is exempt from public disclosure pursuant to Chapter 4, Title 30.

(C) Applications for grants must be submitted at times designated by the director and, at a minimum, must include:

(1) an attestation to the office that the proposed project area is eligible;

(2) evidence demonstrating the applicant’s experience and ability in building, operating, and managing Broadband Service networks serving residential customers;

(3) the total cost and duration of the project;

(4) the amount to be funded by the applicant;

(5) an illustration or description of the area to be served and the number of homes, businesses, community‑anchor points, agricultural operations, or agricultural processing facilities that have access to broadband service as a result of the project;

(6) an assessment of the current level of access to broadband service in the proposed deployment area and the current level of service provided at the point from which broadband deployment is made;

(7) the proposed construction time line, with specific annual build‑out percentage commitments;

(8) a description of the services to be provided, including the proposed upstream and downstream broadband speeds to be delivered and any applicable data caps, provided that any applicant proposing a data cap below one hundred fifty gigabytes of usage each month shall provide justification to the satisfaction of the office that the proposed cap is in the public interest and consistent with industry standards;

(9) any other information or supplementary documentation requested by the office;

(10) for the proposed area to be served, the infrastructure cost for each household for the project;

(11) evidence of support for the project from citizens, local government, businesses, and institutions in the community;

(12) the proposed advertised speed to be marketed to end users;

(13) an explanation of the scalability of the broadband infrastructure to be deployed for higher broadband speeds in the future;

(14) proof that appropriate interconnection agreements and physical pathways to transport consumer broadband traffic to the internet exist;

(15) a five‑year business plan demonstrating that the project in question is a viable business and that operating costs, including capital cost, can be supported from operations; and

(16) evidence of successful operation of retail services, including evidence of appropriate customer satisfaction, or evidence that an operating contract exists with a third party that can meet these requirements.

(D) Applications must be made publicly available by posting on the website of the Authority for a period of at least thirty days before award. During the thirty‑day period, any interested party may submit comments to the director concerning any pending application. A provider of broadband services may submit a protest of any application on the grounds the proposed project covers an area that is not an eligible area pursuant to this section. Protests must be submitted in writing, accompanied by all relevant supporting documentation and must be considered by the Authority in connection with the review of the application. For applications with filed protests, the director shall issue a written decision to the protesting party at least fifteen days before the approval of that application. The Authority may not award any grants to fund deployment in an area that fails to meet the criterion for being unserved. Appeals may be made to the Administrative Law Court pursuant to the Administrative Procedures Act.

(E) The Authority may consult with the Department of Commerce to determine if an eligible project proposed pursuant to this section will benefit a potential economic development project relevant to the proposed area outlined in the eligible project.

(F) Applications must be scored based upon a system that awards a single point for criteria considered to be the minimum level for the provision of broadband service with additional points awarded to criteria that exceed minimum levels. The Authority shall score project applications in accordance with the following:

(1) projects involving service by a South Carolina‑based company, a company that historically has provided broadband service, or that has existing facilities in close proximity to the designated area, must be given five points in its application score where it is documented to the satisfaction of the Authority that service by the company will facilitate deployment and reduce cost for each housing unit by utilizing existing resources, facilities, and infrastructure;

(2) the Authority shall give additional points to projects based upon the estimated number of unserved households within the eligible economically‑distressed county, as determined by the most recent data published by the Federal Communications Commission or any other reliable information available to the Authority. Points are given as follows:

(a) projects that will be located in counties with estimated unserved households of seven hundred or less receive one point;

(b) projects that will be located in counties with estimated unserved households of between seven hundred and one thousand ninety‑nine receive two points; and

(c) projects that will be located in counties with estimated unserved households of two thousand and over receive three points;

(3) the Authority shall give additional points to projects that will provide broadband service to unserved households within the eligible economically‑distressed county, as determined by the most recent data published by the Federal Communications Commission or any other reliable information available to the Authority. Points are given as follows:

(a) projects proposing to serve less than one hundred fifty unserved households within the project area receive one point;

(b) projects proposing to serve between one hundred fifty and two hundred forty‑nine unserved households within the project area receive two points; and

(c) projects proposing to serve two hundred fifty or more unserved households within the project area receive three points;

(4) the Authority shall give additional points to projects that will provide broadband service to unserved businesses located within the eligible economically‑distressed county, as determined by the most recent data published by the Federal Communications Commission or any other reliable information available to the Authority. Points are given to projects that serve unserved businesses within the project area as follows:

(a) projects proposing to serve between one and four businesses receive one point;

(b) projects proposing to serve between five and ten businesses receive two points; and

(c) projects proposing to serve either more than ten businesses or an agricultural operation, agricultural processing facility, or a business with thirty‑one or more full‑time employees receive three points;

(5) the Authority shall give additional points to projects that minimize the infrastructure cost of the proposed project for each household, based upon information available to the Authority; and

(6) projects that will provide minimum download and minimum upload speeds have the aggregate points given under items (1) through (5) multiplied by a factor at the level indicated in the table below:

Minimum Download: Minimum Upload Score Multiplier

25:3 Mbps. 1.00

100:3 Mbps. or greater 2.00

(G) The office shall score applications based upon the metrics provided in subsection (F).

(H) Applications receiving the highest score receive priority status for the awarding of grants pursuant to this section. Applicants awarded grants pursuant to this section shall enter into an agreement with the Authority. The agreement must contain all of the elements outlined in subsection (C) and any other provisions the Authority may require. The agreement must contain a provision governing the time line and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project. Grant funds must be disbursed only upon verification by the Authority that the terms of the agreement have been fulfilled according to the progress milestones contained in the agreement. At project completion, the grant recipient shall certify and provide to the Authority evidence consistent with Federal Communications Commission attestation that the proposed minimum upstream and minimum downstream broadband speeds identified in the application guidelines, and for which a base speed multiplier was awarded pursuant to item (F)(6), are available throughout the project area before any end user connections. A single grant award may not exceed two million dollars. No more than one grant may be awarded each fiscal year for a project in any one eligible economically‑distressed county.

(I)(1) Grant recipients are required to provide matching funds based upon the application scoring pursuant to this section in the following minimum amounts:

Score Matching Requirement

7.0 points or less 55%

Greater than 7.0, but less than 14.0 points 50%

Greater than 14.0, but less than 21.0 points 45%

21.0 points or greater 30%.

(2) Federal or state grants or program funds may not be used for any portion of the matching funds paid by the grant recipient.

(J) The Authority shall require that grant recipients offer the proposed advertised minimum download and minimum upload speeds identified in the project application for the duration of the five‑year service agreement. At least annually, a grant recipient shall provide to the Authority evidence consistent with Federal Communications Commission attestation that the grant recipient is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement. For the duration of the agreement, grant recipients shall disclose any changes to data caps for the project area that differ from the data caps listed in the grant application to the Authority.

(K) A grant recipient shall forfeit the amount of the grant received if it fails to perform, in material respect, the obligations established in the agreement. Grant recipients that fail to provide the minimum advertised connection speed for which a reduction in matching funds was applied shall forfeit that amount. A grant recipient that forfeits amounts disbursed pursuant to this section is liable for the amount disbursed plus interest, computed from the date of the disbursement. The number of subscribers that subscribe to broadband services offered by the provider in the project area may not be a measure of performance pursuant to the agreement for the purposes of this subsection.

(L) Grant recipients shall submit to the Office of Regulatory Staff an annual report for each funded project for the duration of the agreement. The report must include a summary of the items contained in the grant agreement and level of attainment for each and also must include:

(1) the number of households, businesses, agricultural operations, and community anchor points that have broadband access as a result of the project;

(2) the percentage of end users in the project area who have access to broadband service and actually subscribe to the broadband service;

(3) the average monthly subscription cost for broadband service in the project area;

(4) verifiable evidence that retail services are offered at rates and upon terms and conditions commensurate with those provided by any incumbent broadband provider operating in the general area; and

(5) information related to service outages, customer complaints, or other such performance data as necessary to ensure the funding is being used to provide high‑quality service.

(M) The Office of Regulatory Staff shall submit an annual report to the General Assembly before September first. The report must contain the following:

(1) the number of grant projects applied for and the number of grant agreements entered into;

(2) a timeline for each grant agreement and the number of households, businesses, agricultural operations, and community anchor points expected to benefit from each agreement;

(3) the amount of matching funds required for each agreement and the total amount of investment;

(4) a summary of areas receiving grants that are now being provided broadband service and the advertised broadband speeds for those areas;

(5) any breaches of agreements, grant fund forfeitures, or subsequent reductions or refunds of matching funds; and

(6) any recommendations for the grant program, including better sources and methods for improving outcomes and accountability.

(N) Nothing in this article is intended to regulate the provision of broadband except as it relates to oversight of providers receiving funds to provide the services described herein.”

SECTION 2. The existing provisions of Chapter 7, Title 59 are designated “Article 1, General Provisions”.

SECTION 3. The Rural Infrastructure Authority shall collaborate with the following agencies in implementing the provisions of this act: the Department of Commerce, the Department of Administration, the South Carolina Revenue and Fiscal Affairs Office, South Carolina Education Television, and the Department of Transportation.

SECTION 4. No provision of this act changes any rights an entity may have to provide broadband service in this state.

SECTION 5. This act takes effect upon approval by the Governor.

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